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November 1, 1996

Office of the Secretary
Federal Communications Commission
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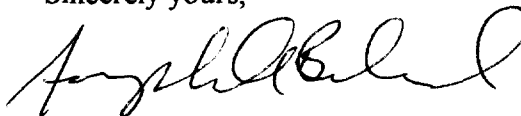
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Re: CS Docket No. 95-178
Definition of Markets

Ladies and Gentlemen:

In comments filed in the above referenced Docket on October 31, 1996, Southern Broadcast Corporation of Sarasota requested that the attached "Reply Comments of Southern Broadcast Corporation of Sarasota" be incorporated by reference. For ease of reference, I am submitting seven copies of this document for inclusion in CS Docket No. 95-178.

Sincerely yours,



Joseph A. Belisle
Counsel for Southern Broadcast
Corporation of Sarasota

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Before the
Federal Communications Commission
Washington, D.C. 20554

SEP 22 1987

Federal Communications Commission
Office of the Secretary

In the Matter of)
)
AMENDMENT OF PARTS 73 AND 76) GEN. Docket No. 87-24
OF THE COMMISSION'S RULES)
RELATING TO PROGRAM EXCLUSIVITY IN)
THE CABLE AND BROADCAST INDUSTRIES)

To: The Commission

**REPLY COMMENTS OF SOUTHERN BROADCAST
CORPORATION OF SARASOTA**

1. Southern Broadcast Corporation of Sarasota ("SBC") submits the following reply to the comments of parties seeking repeal or modification of the present Non-network Territorial Exclusivity Rule, 47 C.F.R. 73.658(m) (hereinafter the "35 Mile Rule").¹

¹ Repeal of the 35 Mile Rule is sought by National Broadcasting Company, Inc., Capital Cities/ABC, Inc., Oklahoma City Broadcasting Company and the National Telecommunications and Information Administration. The rule's modification is proposed by Hubbard Broadcasting, Inc., Pappas Telecasting, Inc, Channel 50 TV Corp., Griffin Television, Inc., Nationwide Communications, Inc. and Capital Broadcasting Company, Inc.

I. **Neither the Repeal nor Proposed Modification
of the 35 Mile Rule Would Foster a Level
Playing Field Among Competitors.**

2. The Notice of Inquiry and Notice of Proposed Rule Making² that initiated this proceeding is an attempt by the Commission to achieve diversity of programs available to consumers, consistent with costs of production, "by ensuring, to the extent possible: (1) that its regulations foster a level playing field among the various competitors, including those who produce and those who distribute; and (2) that freedom of contract and thus private property rights, are unimpeded by the Commission's regulation or deregulation of the industries." NOI/NPRM at para. 5. The commenters supporting repeal or modification of the 35 Mile Rule totally ignored the first of the NOI/NPRM's objectives, i.e., the fostering of a level playing field among competitors.

3. It is hardly surprising that the proponents of the 35 Mile Rule's destruction chose not to analyze the competitive playing field for television exhibition of non-network programs. As demonstrated in SBC's comments, it is a playing field tilted very heavily in favor of large market stations. It is a playing field that favors VHF telecasting over UHF telecasting. Indeed, it is a playing field that insures many UHF stations in overshadowed markets will eke out their existence on the very precipice of economic oblivion.

² FCC 87-65, released April 23, 1987 (hereinafter "NOI/NPRM").

4. Once the severe competitive inequities existing in television broadcasting are considered, the positions taken by the 35 Mile Rule's opponents become untenable. To a marketplace that already greatly favors large market stations, the would-be wreckers of the 35 Mile Rule seek to introduce a final inequity. They ask the Commission to deprive small market stations of the opportunity to purchase attractive non-network programs. As noted in SBC's comments, this blow to the viability of small market television will likely deprive smaller communities of the local television outlets to which they are entitled under Section 307(b) of the Communications Act. This is manifestly contrary to the public interest.

III. Neither Repeal nor the Proposed Modification of the 35 Mile Rule Would Stimulate Program Production.

5. The NOI/NPRM speculated that the 35 Mile Rule may have inhibited the incentive of program producers to produce programs for exhibition on television. NOI/NPRM at paras. 63 and 64. However, none of the opponents of the present rule has submitted any credible data or analysis tending to support this speculation. Indeed the only reliable testimony submitted in this proceeding refutes the proposition that the 35 Mile Rule may inhibit program production.

6. Specifically, the Motion Picture Association of America, Inc. ("MPAA"), an organization composed of nine major producers of video programming filed the following comments

with respect to modification of the 35 Mile Rule:

The territorial exclusivity rule also provides a useful check on the market power in program acquisition that can be exercised by a major group owner of television broadcast stations. In the absence of this rule, a group owner could make inordinate territorial exclusivity demands on behalf of its stations as a condition of carriage. The syndicator would face the choice of not clearing his program on a significant number of important, major market television stations, or granting clearance at the price of excluding sales to a significant number of other stations.

The production of new programming is driven by the availability of viable outlets for the programming. Any measure that would weaken financially a significant number of broadcast stations will tend to reduce the number of potential purchasers of syndicated programs. With fewer financially-sound outlets competing for program rights, the available market for syndicators shrinks, the incentive to invest in new programming diminishes, and the opportunities for new entrants in the syndication market diminish.

The viewer's stake in territorial exclusivity flows from the rule's effect on local broadcasters and program syndicators. Any reduction in viable broadcast outlets, or any reduction in the quantity and quality of programming produced for and distributed by these outlets, disserves the public interest in diversity and competition.

Unquestionably, program producers are interested in retaining the access to smaller television markets allowed them under the 35 Mile Rule. This interest is more than equalled by the critical importance small market stations attach to access to the attractive programs these producers supply. Clearly the 35 Mile Rule fosters the freedom of producers and syndicators to contract with small market stations.

III. Modification of the 35 Mile Rule Into a "Grade B Contour Rule" Is Unwarranted.

7. The proponents of modifying the 35 Mile Rule suggest that stations be allowed to obtain non-network programming exclusivity anywhere within their Grade B contour. This proposal ignores the vast disparity existing between the coverage area of the average UHF station and the average VHF station. As demonstrated in SBC's Comments at Exhibit 2, Attachment A, p. 3, the average UHF station covers an area of 6,100 square miles, while the average low band VHF station covers an area of 19,000 square miles. VHF stations have an extremely large advantage over UHF stations with respect to the amount of exclusivity they can use. Thus, a Grade B exclusivity rule only serves to heighten the existing competitive disparities between UHF and VHF television broadcasting.

8. Apart from the unfairness to small market UHF stations embodied in the proposal to extend allowable program exclusivity to the Grade B contour, problems exist with the orderly administration of a Grade B contour exclusivity rule. Indeed these administrative problems resulted in the rejection of similar program exclusivity proposals in CATV -- Non-Network Arrangements, 42 FCC 2d 173 (1973). There, the Commission stated:

Several of the parties...suggested the alternative of limiting territorial exclusivity in syndicated program contracts as against stations in "the

market" or against stations located within a particular signal contour or within the Area of Dominant Influence (ADI). Use of the foregoing standards would create uncertainty in negotiations because of factual disputes concerning the location of the boundaries and because such boundaries would be changing. To avoid these complications we are rejecting these proposed standards.

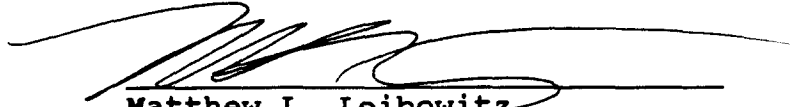
42 FCC 2d at 182 (footnote omitted). These administrative problems with respect to a Grade B contour rule are as compelling today as they were when the Commission rejected the various proposed signal contour exclusivity rules in 1973.

Conclusions

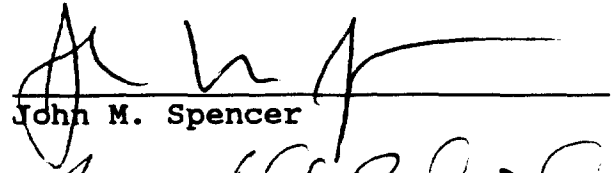
The only substantial comments in the record of this proceeding with respect to repeal, modification or retention of the 35 Mile Rule demonstrate the existing Rule's utility in permitting small market television stations access to program suppliers. The 35 Mile Rule is a counterbalance to market imperfections inherent in the Commission's regulation of television broadcasting under Section 307(b) of the Communications Act. It is a rule supported by program producers and small market stations, alike. No credible reasons have been advanced for its repeal or modification. Preservation of the local television outlets mandated by

Section 307(b) of the Communications Act is fostered by its retention. This proceeding should keep the 35 Mile Rule in its present form.

Respectfully submitted,



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September 21, 1987

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CERTIFICATE OF SERVICE

I, Maria C. Rodriguez, hereby certify that the attached Reply Comments of Southern Broadcast Corporation of Sarasota were sent this 21st day of September, 1987, to the following persons by U.S. Mail, First Class Postage Prepaid:

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